

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010100955

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On October 19, 2010 Student filed a Due Process Hearing Request¹ (complaint) naming the Fairfield Suisun Unified School District (District).

On October 28, 2010, the District timely filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student alleges seven claims in his complaint, which are all insufficiently pled. In Issue one Student alleges that he is fearful of his high school because of the way people at the school reacted when he and his mother (Mother) asked a simple question. In Issue two Student claims that he was traumatized by the incident. Student then asks that he be moved to a different school in Issue three. In Issue four Student alleges that the school principal told Mother that she made the principal “sick to her stomach.” In Issue five Student alleges that because Mother had to wait in the school office, his brother was two and a half hours late for his G-tube feeding. Student then alleges in Issue six that other students in the school hallway, were upset because the teacher was late, and teaching assistants were blocking the students and were not in control. In Issue seven Student alleges that a blonde lady who did not identify herself to Mother told Mother to leave the school. This issue also alleges that Mother did not know she was in trouble for asking a simple question.

Student attaches to his complaint a description of an incident that appears to be the factual background for the allegations in his complaint. It was written by Mother. In it she

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.]; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

describes an incident when she took Student to school for the first time at the beginning of the 2010-2011 school year. Teaching assistants were not allowing the students to enter the special day class (SDC) because the SDC teacher had a rule that no one was permitted in the classroom when she was not present. When the teacher arrived, Mother asked why the rule had been implemented. Apparently, this incident resulted in Mother receiving some sort of citation which may involve the district attorney's office.

Although the written explanation attached to the complaint gives many details with regard to the incident at school, it fails to meet the requirements for a sufficient complaint. Nothing in the body of the complaint or in the attached explanation alleges why anything that happened during the incident caused Student to be denied a free appropriate public education or prevented Mother from participating in the development of Student's individualized education program (IEP). Each issue describes a portion of the incident that occurred on the day in question, but fails to relate this incident to any proposed initiation or change concerning the identification, evaluation, or educational placement of Student or the provision to him of a FAPE.

In sum, Student's complaint fails to indicate any facts that would put the District on notice of what they did to deny him a FAPE. Student does not allege that the District failed to implement his IEP, or took any action which denied him a FAPE or in some way resulted in the loss to Student of any educational opportunity. Nor does the complaint state how Mother may have been denied a right to participate in Student's IEP process. As discussed above, a school district is entitled to know the basis of each claim and the nature of the specific allegations being made against it, with respect to each issue or problem, so that the district may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing. For the reasons described above, Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).

Education Code, section 56505, subdivision (e)(6), provides for the assistance of a mediator to assist parents in identifying and formulating the issues in a due process complaint if the parents are not represented by an attorney. As noted in the Order below, if Mother wishes to receive assistance with regard to writing an amended due process complaint, she may contact OAH with her request.

ORDER

1. Pursuant to title 20 United States Code section 1415(c)(2)(D), Student's complaint is insufficiently pled, and the District's notice of insufficiency is granted.

2. Pursuant to title 20 United States Code section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.⁸

3. The amended complaint shall comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order. The amended complaint shall be served on the District and proof of that service should be attached to the amended complaint filed with OAH.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

6. Pursuant to Education Code, section 56505, subdivision (e)(6), upon the request of a parent who is not represented by an attorney, OAH shall provide a mediator to assist the parent in identifying the issues and the proposed resolutions of the issues. Should Mother desire the assistance of a mediator, Mother must contact OAH at (916) 263-0880 immediately upon receipt of this Order to request assistance in formulating the issues in Student's complaint.

Dated: November 2, 2010

/s/

DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.